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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) Gen. Docket No. 90-314
Rules to Establish New)
Personal Communications) ET Docket No. 92-100
Communications)

ORIGINAL
FILE

To: The Commission

REPLY COMMENTS
OF
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. Section 1.415, hereby respectfully submits its Reply Comments to the Comments filed in response to the Notice of Proposed Rule Making ("NPRM") adopted by the Federal Communications Commission in the above-captioned proceeding.¹

I. BACKGROUND

On July 16, 1992, the Commission proposed service rules to establish a Personal Communications Service ("PCS").^{2 3} The

¹ Notice of Proposed Rule Making, (FCC 92-333), Gen. Doc. No. 90-314, 57 FR 40630 (September 4, 1992).

² In association with this rule making proceeding, the Commission reallocated a portion of the 1850 to 2200 MHz band ("2 GHz band") to meet the spectrum requirements for innovative new spectrum technologies such as the personal communications services. Report and Order and Third Notice of Proposed Rule Making (FCC 92-437), ET Doc No. 92-9, 57 FR 49020 (October 29, 1992).

³ The Commission proposes a definition of PCS as "a family of mobile or portable radio communications services which could provide services to individuals and businesses, and be integrated with a variety of competing networks."

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Commission proposed to establish PCS in both the 2 GHz band and the 900 MHz band, and sought comments on the regulatory structure of these new services designated as PCS. More than one hundred Comments were filed in this proceeding generally supporting the establishment of PCS.

NABER, in its Comments, focused primarily on two issues: (1) the regulation of PCS providers as either private carriers and/or common carriers and (2) the regulation of the proposed advanced messaging services ("AMS") in the 3 MHz of spectrum proposed to be allocated in the 900 MHz band. NABER now takes this opportunity to respond to certain of the suggestions and recommendations made by other parties in this proceeding.

II. REPLY COMMENTS

A. Severance of ET Docket 92-100 from General Docket No. 90-314

In its Comments, NABER urged the Commission to separate ET Docket No. 92-100 from the proceeding under General Docket No. 90-314. The implementation of advanced messaging and paging services as proposed in the 900 MHz band should not be delayed by the controversy associated with the reallocation of spectrum in the 2 GHz band for the wideband PCS. Several other commenters agreed with NABER's position and also encouraged the Commission to sever the combined proceeding.

The issues related to the proceeding in General Docket No. 90-314 have received extensive public and press attention, and has generated controversy between the incumbent licensees of the spectrum and the proponents of PCS. ET Docket No. 92-100, on the

other hand, has not generated the same amount of controversy. Less than 1% of the comments filed in response to the NPRM addressed the regulatory or technical issues for the narrowband PCS allocation in the 900 MHz band. NABER is concerned that the Commission's consolidation of the two proceedings may have resulted in less than a full record before the Commission on the 900 MHz reallocation and regulatory issues.

NABER agrees that many of the issues, i.e. regulatory status, interconnection, and assignment procedures, are sufficiently similar to warrant the consolidation of the two proceeding to reduce the Commission's administrative burden in reviewing the comments. On the other hand, issues relating to the number of licenses to issue, channelization, service areas, and interference standards in the 900 MHz band have no correlation to the standards in the 2 GHz band, and need to be addressed separately from the broadband PCS rules. The Commission conserves no administrative resources by continued consolidation of the two proceedings.

Further, there is the potential that action on the establishment of PCS in the 2 GHz band may be delayed because of the difficulties surrounding the relocation of the incumbent microwave licensees in this band. The reallocation and transition procedure is being handled in a separate proceeding, but there is a potential that challenges to the Commission's action in the allocation proceeding may cause delay in the service rules proceeding. There are no incumbent users of the 900 MHz band, and the advent of advanced messaging and paging services should not be

delayed by the 2 GHz controversy. Accordingly, the Commission should separate the ET Docket No. 92-100 proceeding from the General Docket No. 90-314, allocate the 900 MHz band for narrowband PCS, including AMS, and adopt service rules to expedite the implementation of the next generation of paging technologies.

B. Regulation as Private Carrier/Common Carrier

The Commission's proposed rules structured PCS as a private land mobile radio service. NABER concurred with the Commission's proposal, and urged the Commission to adopt this regulatory treatment. NABER believes that minimal regulation, as afforded by private carrier status, will ensure rapid deployment of PCS to the general public. Further, for the same reason, NABER encourages the Commission to preempt state and local regulation of PCS. Finally, NABER favored the Commission's proposal to explicitly confirm that PCS licensees have a federally protected right to interconnection with the PSTN whether PCS be classified as a private or common carrier service.

Like NABER, there was a small contingent of parties to the proceeding who recommended that PCS be regulated as a private land mobile radio service. However, the majority of commenters were concerned that treatment of PCS as a private carrier would have an anti-competitive affect in the marketplace. These parties believe that PCS will be a competitor to cellular service. They are concerned that a disparity in regulatory treatment between cellular service and PCS would provide a competitive advantage to PCS. For that reason, several of these commenters recommended that the

Commission regulate PCS as common carriage to ensure cellular competition. The other commenters made no recommendation as to how to treat PCS, but rather suggested the Commission revisit the regulatory treatment of the cellular service in light of the proposals for PCS.

Finally, there were persons who believed that it would be premature for the Commission to select regulatory status for PCS. They argued that until PCS was implemented it would be difficult to determine how the service will be offered. Accordingly, these persons recommended that the Commission permit the PCS applicant select the regulatory treatment desired based on the service offering.

NABER reiterates its view that PCS should be regulated as a private carrier. The less restrictive the regulations of PCS, the more opportunity for the service to be implemented and thrive. NABER opposes regulations of all PCS as a common carrier. At a minimum, should the Commission determine that common carrier status will be necessary for some provision of PCS, the Commission should provide the applicant an opportunity to select the regulatory status based upon the service offering.

C. Interconnection

The commenters overwhelmingly endorsed the Commission's proposal to impose a federally protected right of interconnection with the PSTN for PCS on no less favorable terms as offered by Local Exchange Carriers ("LEC") to any other customer or carrier. NABER supports PageNet's argument that interconnection rights

should not differ depending on whether the provider is classified as a common or private carrier.⁴ NABER agrees that rates charged a private carrier paging provider for interconnection with the PSTN should not differ from rates charged a radio common carrier. Accordingly, NABER urges the Commission to impose regulations to ensure that PCS providers are able to obtain a type of interconnection that is reasonable for the particular PCS system and on no less favorable terms as offered by the LEC to any other customer or carrier, regardless of the licensee's designation as a common carrier or private carrier.

D. Assignment Procedures

The Commission sought comment on what method should be used to assign PCS licenses, should there be mutually exclusive applications filed and insufficient spectrum to assign all applicants. Currently, the Commission has only two mechanisms statutorily available: comparative hearings and lotteries. NABER strongly encouraged the Commission to adopt lotteries to use in the licensing of AMS, but only if strict licensing procedures and construction rules were imposed to deter speculation. NABER considered comparative hearings too burdensome and time consuming, and an impediment to rapid deployment of AMS.

A majority of parties who commented on this issue also urged the Commission to use lotteries rather than comparative hearings and recommended the imposition of stringent licensing procedures

⁴ Comments of Paging Network, Inc. filed November 9, 1992 at p. 27-29.

and construction rules. A number of these persons also recommended that the Commission require a licensee to operate a system for a minimum period of time prior to transferring control or assigning the license. NABER adds its support to the use of a lottery procedure with sufficient safeguards to deter speculation. Even with the more stringent regulations, such as higher filing fees, financial qualifications, construction benchmarks, and holding periods, not all speculation can be prevented. Regardless of the method by which the Commission selects to license PCS, there will always be an opportunity for speculators. NABER therefore believes that the use of lotteries with procedural safeguards are the most efficient method to license PCS.

A few commenters encouraged the Commission to continue to seek Congressional authority for competitive bidding/auctions to license spectrum, and to adopt auctions for licensing PCS authorizations. NABER urges the Commission not consider auctions to license PCS. Currently, the Commission does not have the authority to use auctions to assign spectrum,⁵ and must obtain Congressional authority to do so. Without addressing the merits of the use of auctions,⁶ awaiting Congressional authority to initiate PCS licensing may further delay the implementation of the service.

⁵ See Order (DA 92-1677), RM-7985, In the Matter of Policies and Rules for Licensing Fallow 800 MHz Specialized Mobile Radio Spectrum Through a Competitive Bidding Process, adopted December 9, 1992. (Private Radio Bureau).

⁶ See Comments of NABER filed July 17, 1992 in response of the Petition for Rule Making filed by Fleet Call, Inc., RM-7985, Report No. 1889, released May 11, 1992 (NABER opposed the use of auctions).

Accordingly, the Commission should not consider auctions as a viable solution for PCS licensing.

III. CONCLUSION

WHEREFORE, the **National Association of Business and Educational Radio, Inc.** respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**National Association of Business
and Educational Radio, Inc.**

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